

The Director's office, parties, and Administrative Law Judge all treated this proceeding as a preliminary hearing matter within the context of a post-Award request for additional medical treatment. As such, the jurisdiction of the Appeals Board to review preliminary hearing findings is statutorily created by K.S.A. 44-534a. The statute provides the Appeals Board may review those preliminary findings pertaining to the following: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice was given or claim timely made; and (4) whether certain defenses apply. The Appeals Board also has jurisdiction to review preliminary hearing findings if it is alleged an administrative law judge exceeded their jurisdiction. See K.S.A. 44-551, as amended by S.B. 59 (1995).

Although the preferred procedure would be to obtain the opinion of a health care provider that had either examined claimant or was otherwise aware of claimant's condition and was able to provide treatment that should be of benefit; due to the fact both Doctors Artz and Wellshear have treated claimant for approximately 10 years without resolution of his symptoms, the Appeals Board finds the Administrative Law Judge did not act arbitrarily or capriciously by ordering a change of treating health care providers. Therefore, the Administrative Law Judge did not exceed his jurisdiction and authority in denying claimant's request for continued authorization of certain health care providers. Under K.S.A. 44-534a, the Administrative Law Judge is specifically given the authority to adjudicate issues of medical treatment.

Because the issues presented here are not enumerated in K.S.A. 44-534a, nor did the Administrative Law Judge exceed his jurisdiction and authority in denying claimant's request for authorization of certain health care providers, the issues are not reviewable by the Appeals Board at this juncture of the proceeding. If desired, the parties may now proceed to regular hearing and final order.

Claimant's request for additional attorney fees for services rendered at the Administrative Law Judge level is denied. The Administrative Law Judge is an expert in determining the reasonableness of attorney fees relating to those matters before him and the Appeals Board will give some deference to the Judge's opinion. See City of Wichita v. B G Products, Inc., 252 Kan. 367, 845 P.2d 649 (1993). The Appeals Board finds no reason to overturn the decision and finding of the Administrative Law Judge regarding the reasonable amount of attorney fees claimant is entitled to in this matter. Regarding claimant's request that he be granted additional fees for services rendered in connection with this appeal, the Appeals Board finds that is an issue that the claimant must take up before the Administrative Law Judge.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this review should be, and hereby is, dismissed; that the Preliminary Hearing Order of Administrative Law Judge John D. Clark entered in this proceeding on June 14, 1995, remains in full force and effect; and that claimant should take up with the Administrative Law Judge its request for additional attorneys fees for services rendered in this review.

IT IS SO ORDERED.

Dated this ____ day of November, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Martin E. Updegraff, Wichita, Kansas
Don D. Gribble, II, Wichita, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director